Roundtable Responses to Additional Audience Questions

Wind Energy Training Broadcast #2
July 31, 2013

During the live broadcast, roundtable participants fielded questions from the audience online. Below are answers written by the roundtable participants to questions that they did not have time to address during the broadcast. The members of the roundtable included: Christy Johnson-Hughes (U.S. Fish and Wildlife Service), Dale Strickland (WEST, Inc.), Cris Hein (Bat Conservation International), Alicia F. King (U.S. Fish and Wildlife Service), and Brian Millsap (U.S. Fish and Wildlife Service).

1. **Can you elaborate on the lack of consensus on the Land-Based Wind Energy Guidelines (WEG) Tier 2/3 impacts? Are we making progress on more firm thresholds?**

   Christy Johnson-Hughes: I am not aware of a lack of consensus between Tier 2 (Site Characterization) and Tier 3 (pre-construction studies). The question may be focused more on Tier 3 and Tier 4 (post-construction) studies. There isn't really a lack of consensus on the outcomes of pre-construction studies and how they predict risk to species post-construction. It is just how we define risk. As was mentioned during the broadcast, we are finding that while actual numbers are difficult to predict, trends are consistent. The U.S. Fish and Wildlife Service does not tend to set thresholds for take of species. Species populations, habitat, and project type vary so much by location that thresholds are not meaningful. We also do not have population numbers for many of the species impacted by wind facilities, such as non-listed bats and migratory birds. It is difficult to set thresholds without population numbers.

2. **There are not standardized protocols for some bird and bat pre-construction assessments (beyond the Golden eagle and Hawk Migration Association North America protocols). Are folks working on standardizing these protocols? If so, could you provide a good source for these?**

   Christy Johnson-Hughes, Cris Hein: It is difficult to have standardized protocols for pre-construction studies because of the variability in habitat characteristics and objectives among proposed facilities. However, there are resources for pre-construction studies. One of the best at the moment is the National Wind Coordinating Collaborative's Comprehensive Guide to Studying Wind Energy/Wildlife Interactions. http://www.nationalwind.org//publications/comprehensiveguide.aspx. The Service's

Wind Energy webpage also has additional resources that are helpful when considering pre-construction studies.

3. **Is there a level of risk that would preclude issuance of a take permit?**

   Brian Millsap: For eagles, we have established thresholds where issuance of a permit may be problematic given predicted levels of removal at local scales. These are not hard ceilings, but levels of take that are flagged as being of concern, and warranting careful consideration. The thresholds and benchmarks are described in the detail in the Eagle Conservation Plan Guidance (ECPG).

4. **Would the Service expect a small wind development to apply for an eagle take permit if they documented two Bald Eagle nests 5 and 9 miles away?**

   Brian Millsap: The more important question is are eagles using the project footprint, and if so, an eagle take permit might be warranted. The ECPG advocates for using eagle count data from the project footprint in determining the likely risk of eagle take. The presence of nearby nests can be an indication of heightened risk, but the more meaningful measure is the level of use of the project footprint by eagles.

5. **When doing an REA and you calculate 140 retrofits per 5 year permit period for goldens and 25 for balds, is this additive? Or is the 25 retrofits for balds figured in with the 140 for goldens.**

   Brian Millsap: In most parts of the US, there are positive take thresholds for bald eagles, meaning compensatory mitigation to offset additional authorized mortality is not required (unless the authorized take exceeds the take thresholds). But in the above example, assuming compensatory mitigation was required for both species and the poles being retrofitted were likely used by both species of eagle, the mitigation would not be additive and addressing the requirement for golden eagles would cover bald eagles as well.

6. **Where do we find list of projects that are currently in the permitting phase for eagle takes?**

   Brian Millsap: We do not currently post this information.

7. **Would an adjoining operating farm within 2 miles that has experienced 6 kills in a 5 year period preclude issuance of a permit.**

Brian Millsap: Not necessarily. The ECPG outlines a process for evaluating these kinds of data in a cumulative format. If the take from surrounding projects or activities, in combination with take at the prospective facility seeking a permit, were likely to be less than 5% of the local-area population of either species of eagle, the permit would potentially be compatible with our management objectives.

8. **Please define "Significant adverse impacts" as noted within the Guidelines.**

Brian Millsap: As related to the ECPG, a project in Category 1 would have potential significant adverse impacts. Projects in this category, as defined in the ECPG, have an important eagle-use area or migration concentration site within the project footprint; or have an annual eagle fatality estimate (average number of eagles predicted to be taken annually) > 5% of the estimated local-area population size; or cause the cumulative annual take for the local-area population to exceed 5% of the estimated local-area population size. In addition, projects that have eagle nests within ½ the mean project-area inter-nest distance of the project footprint should be carefully evaluated. If it is likely eagles occupying these territories use or pass through the project footprint, category 1 designation may be appropriate.

Christy Johnson-Hughes: "Significant" has a specific definition in the WEG: "For purposes of characterizing impacts to species of concern and their habitats, "significance" takes into account the duration, scope, and intensity of an impact. Impacts that are very brief or highly transitory, do not extend beyond the immediate small area where they occur, and are minor in their intensity are not likely to be significant. Conversely, those that persist for a relatively long time, encompass a large area or extend well beyond the immediate area where they occur, or have substantial consequences are almost certainly significant. A determination of significance may include cumulative impacts of other actions. There is probably some unavoidable overlap among these three characteristics, as well as some inherent ambiguity in these terms, requiring the exercise of judgment and the development of a consistent approach over time." Significant adverse impacts are determined at the project level, based on the species impacted, the project, and location.

9. **If I understood Brian's statement about bald eagle permitting, unlike golden eagles no compensatory mitigation is necessary?**

Brian Millsap: That is correct. In most parts of the US, there are positive take thresholds for bald eagles, meaning compensatory mitigation to offset additional authorized mortality is not required (unless the authorized take exceeds the take thresholds). The Eagle Take Rule still allows the Service to require mitigation to help offset negative impacts of such permits, but that mitigation does not need to provide a direct offset to the authorized mortality.

10. Can you comment on the Service's rationale for proposing a 30 year permit period for incidental takings under the Bald and Golden Eagle Protection Act?

Brian Millsap: The maximum term for "programmatic" permits (permits authorizing recurring take) is five years, after which time a new permit application had to be submitted. Developers have indicated that permit fees are considered a small part of the large investment required of most projects requiring programmatic permits. This five-year limit has made it difficult for renewable energy development by creating uncertainty about the longevity of a project's regulatory status. The proposed 30 year permit would provide renewable energy companies with a greater degree of certainty while simultaneously ensuring that eagle populations remain robust and protected. To obtain a permit for the limited take of a small number of eagles, a developer must commit in advance to undertaking appropriate actions that minimize eagle deaths, and to conservation measures that will compensate for any unavoidable take. All permits will be closely monitored to ensure that allowable take numbers are not exceeded and that conservation measures are in place and effective.